



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,117	03/31/2004	James E. Lavallee	EMC04-10(04035)	5149
58404	7590	10/14/2008		
BARRY W. CHAPIN CHAPIN INTELLECTUAL PROPERTY LAW, LLC WESTBOROUGH OFFICE PARK 1700 WEST PARK DRIVE, SUITE 280 WESTBOROUGH, MA 01581			EXAMINER MCLEOD, MARSHALL M	
			ART UNIT 2457	PAPER NUMBER
			MAIL DATE 10/14/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/814,117	Applicant(s) LAVALLEE ET AL.
Examiner MARSHALL MCLEOD	Art Unit 2157

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-22, 24-27, 30-36, 42-45, 48, 50-54 and 56.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/ARIO ETIENNE/
Supervisory Patent Examiner, Art Unit 2457

Continuation of 11, does NOT place the application in condition for allowance because: With respect to claim 1, applicants arguments were carefully and respectfully considered but are not persuasive. Due to applicants amendment of incorporating claim 55 into claim 1, the prior rejection of claim 55 is now applicable to claim 1 in conjunction with the prior rejection for claim 1, because the rejection of claim 55 depends from claim 1. Also the examiner discloses to applicant that due to the amendments of incorporating claim 55 into claim 1, the prior art of Heitman and Miyake must be viewed as a whole as combined under 35 U.S.C. 103(a). As such, it is well known to someone having ordinary skill within the art that in order to get the zone view to display as is disclosed in Miyake. A symbol or icon must be selected or clicked on representing the zone/zone view in order to zone being overlayed on a physical topology.

With respect to applicant's argument in the middle of page 24 of the instant remarks. The examiner would like to remind applicant that the claim is is rejected under 35 U.S.C. 103(a) and as such prior art Heitman and Miyake should be viewed as a whole as combined. Heitman discloses in Column 45, lines 26-40 a switch with ports, which when combined with the teachings from Miyake Page 4, [0055], lines 1-10, discloses a physical network topology to indicate ports of the at least one switch resource in the physical topology that make up the zone. It should also be noted that as disclosed in Miyake Page 5, [0065], lines 1-9, a user can have multiple windows for managing an entire system based on topology information, therefore a user can view/display simultaneously a physical network as well as a virtual network.

Claims 2-15 and 56 are rejected for the prior reasons given in the final office action and because claim 1 is not in condition for allowance.

The examiner respectfully and regrettably state to applicant that independent claims 16, 42 and 48, along with there dependent claims 17-21 and 43-45 are rejected for the prior reasons given in the final office action along with the reasons stated within this advisory action for the rejection of claim 1.

With respect to applicants argument in the middle of page 27. The examiner respectfully reminds applicant that the claim is is rejected under 35 U.S.C. 103(a) and as such prior art Heitman and Miyake should be viewed as a whole as combined. Where Miyake in conjunction with the prior rejection of claim 23 discloses at Page 5, [0065], Figure 9, item 540 which discloses a virtual network in relation to a physical network.

Claims 24-26 and 56 are rejected for the prior reasons given in the final office action and because claim 22 is not in condition for allowance.

The examiner respectfully and regrettably state to applicant that independent claim 27 along with dependent claims 30-36 are rejected for the prior reasons given in the final office action along with the reasons stated within this advisory action for the rejection of claim 22.

With respect to applicants argument in the middle of page 29 pertaining to claim 50, where applicant has incorporated the limitations of claim 1 within claim 50. The examiner respectfully and regrettably state to applicant that after a careful review claim 50 is not allowable for the the reasons given in the final office action in conjunction with the reason given in this advisory action for the rejection of claim 1. As such claims 51-54 which depend from claim 50, are rejected for the prior reasons given in the final office action and because claim 50 is not in condition for allowance, as explained by the rejection within this advisory action.